Judge: Hon. Marc Barreca
Chapter: Chapter 7
Hearing Date: May 18, 2012
Hearing Time: 9:30 a.m.
Hearing Site: 700 Stewart Street, #7106
Seattle, WA 98101
Reply Date: May 11, 2012

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ADAM GROSSMAN, Debtor.	Bankruptcy No. 10-19817 TRUSTEE'S 1) OBJECTION TO DEBTOR'S MOTION FOR ABANDONMENT OF 1679 STRAUSS LANE AND 773 METRO WAY TO THE DEBTOR ; 2) OBJECTION TO PNC'S MOTION FOR RELIEF FROM STAY AS TO 773 METRO WAY PROPERTY; AND 3) RESPONSE TO WELLS FARGO BANK'S MOTION FOR RELIEF FROM STAY AS TO 1679 STRAUSS LANE

Ron Brown, the Chapter 7 Trustee herein objects to the Debtor's Motion for Abandonment of 1679 Strauss Lane and 773 Metro Way to the Debtor ("Debtor's Motion"); 2) Objects to PNC's Motion for Relief from Stay as to 773 Metro Way Property; and 3) Responds to Wells Fargo Bank's Motion for Relief from Stay as to the 1679 Strauss Lane Property for the reasons set forth below.

The Trustee incorporates the objection filed by Jill Borodin to the Debtor's Motion as though it was fully set forth herein.

General Objection to Debtor's Motion

As a general rule, this Court should not entertain the Debtor's Motion on the principals of justice. The debtor, post-petition, and without court authority, transferred both the 773 Metro Way and the 1697 Strauss Lane Property to a family trust that he set up and was the sole beneficiary of. Thereafter, he also transferred both properties to Keywest Financial for no

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consideration. He then had Keywest Financial transfer these properties to other parties, again for no consideration. The Trustee's counsel , after substantial work, effort and legal fees, has title to both properties quieted in the trustee's name. As soon as title to those properties were quieted in the name of the trustee, the debtor filed his motion to have both properties abandoned, to himself. Wow. The debtor's motion is egregious and should be denied.

To the extent this Court is going to entertain the Debtor's Motion, the Trustee requests that any property abandoned be impressed with a lien in favor of this estate for all attorney's fees incurred in quieting title to those properties.

773 Metro Way –

Debtor's Motion

At the present time the 773 Metro Way Property is not titled in the name of the trustee and therefore this Court cannot order the Trustee to abandon it to the debtor. The Debtor's Motion is moot until the time the 773 Metro Way Property is titled in the name of the Trustee.

There is substantial equity in the 773 Metro Way Property. The current value of the 773 Metro Way Property is $160,000.00. See Declaration of Rob Middleton filed simultaneously herewith. The total owed against the Property is $91,000. See docket #333. There are no liens other than the PNC bank deed of trust against the 773 Metro Way Property. See Exhibit "1", litigation guarantee for 773 Metro Way Property attached to the Declaration of Denice Moewes filed simultaneously herewith ("Moewes Declaration").

Thus there is approximately $50,000.00 after payment of ordinary closing costs (calculated at the high rate of 10%) and payment of the first and only lien. Clearly the 773 Metro Way Property is neither burdensome or of inconsequential value and the Debtor's Motion should be denied.

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PNC Bank's Motion

The Trustee has to file a motion for default in adversary proceeding 11-1954 which will result in the 773 Metro Way Property being quieted in the name of the Trustee. The Trustee's counsel will file the motion in the next few days. Once title to the 773 Metro Way Property is quieted in the name of the Trustee, the 773 Metro Way Property will be listed for sale.

The motion for relief from stay filed by PNC Bank should be denied as there is equity in the property and the bank is adequately protected.

1697 Strauss Lane-

Debtor's Motion

As set forth in the responsive pleadings filed by Jill Borodin an order compelling abandonment is "the exception, not the rule." *Yack v. Wash. Mut. Bank (In re Yack), 2009 Bankr. LEXIS 4554 (B.A.P. 9th Cir. Feb. 18, 2009).* The Debtor must prove by a preponderance of the evidence that the property is burdensome or of inconsequential value to the estate. *Vu v. Kendall (In re Vu), 245 B.R. 644 (B.A.P. 9th Cir. Cal. 2000)*. Nothing in the Bankruptcy Code requires that a trustee demonstrate in advance of attempting a sale that the sale price will exceed all costs and encumbrances, and absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *Id. at 647-648* (citations omitted).

The debtor has submitted no admissible evidence that the property is burdensome or of inconsequential value and the Debtor's Motion should be denied for failure to meet his burden of proof.

The Trustee's real estate agent values the property at $137,500. Middleton Declaration. The Trustee agrees with the debtor's statement that the first is owed approximately $66,000.00 and the second is owed approximately $88,000. Thus the 1679 Strauss Property is worth $16,500 less than it is owed.

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The debtor's analysis as to the 1679 Strauss Lane property indicates there would be long-term capital gains that the estate would have to pay if it sold the property. The debtor's states that the long term capital gains rate is 20%. It is not, it is 15%. Thus using the debtors numbers and the value of $137,500.00 stated, the capital gain tax would be $20,625.00. The estate is allowed to deduct costs of administration against capital gains. See section 1398 of the Internal Revenue Code. This Court has already awarded Wood & Jones, P.S. fees in the amount of $83,475.23 (docket #300). Wood and Jones has incurred additional fees that have not been applied for, in the amount of $100,000.00. Moewes Declaration. Thus, this estate does not and will not have capital gain liability.

More importantly, if the asset a debtor is seeking abandonment of has no equity in it, then the debtor does not have standing to request abandonment. Since the debtor has no interest in the property to exempt, he does not have a pecuniary interest necessary to give him standing to object to the Trustee's administration of this asset:

> The reason is that a debtor receives a distribution from the estate only after the claims of all creditors have been paid in full. See 11 U.S.C. § 726(a)(6). Because the liabilities of most debtors exceed their assets, however, creditors are rarely paid in full. *Ulz*, 401 B.R. at 328. If they are not, the debtor is not paid at all and so has no pecuniary interest in how the estate's assets are administered. *Cult Awareness Network*, 151 F.3d at 607. Only if the assets are greater than necessary to pay the claims of creditors, so that a debtor has a reasonable chance of being paid the surplus, will the debtor have standing to object to the estate's administration. *Id*. at 608; *see also Stinnett,* 465 F.3d at 315; *Drost,* 228 B.R. at 210.

In re Adams, 424 B.R. 434, 436 (Bankr. N.D. Ill. 2010).

The Trustee's administration of this estate does not 'diminish' any property in which the debtor has a 'pecuniary' interest, nor does it 'increase his burdens' or 'detrimentally affect his rights'. As the debtor has no equity in the property that the Trustee is administering, and

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accordingly no claim of exemption to the same, he has no standing to object to the Trustee's administration.

The Trustee's counsel and Wells Fargo Bank's counsel have been talking about the possibility of the second position trust holder agreeing to a short-sale. Although both the first and second position deeds of trust are held by Wells Fargo Bank, they are through different departments. As such, Ms. Aspaas, (counsel of record for Wells Fargo Bank) is attempting to locate the proper person for discussing this possibility. The talks are preliminary and we will have more information at the time of the hearing. However, any short-sale would contain a carve-out for creditors above the fees of the trustee and his counsel.

If the Court is not inclined to deny the Debtor's Motion, the Trustee requests the Court continue it while the second position trust holder and the Trustee attempt to reach an agreement for a short-sale and carve-out.

WELLS FARGO BANK

Denice Moewes and Jennifer Aspaas have agreed that the Trustee will have six months to sell the 1679 Strauss Lane Property. At the end of the six month period, if the property has not sold, the lender will be granted relief from stay.

Debtor's Motion is Non-Sensical

The debtor's motion is non-sensical to the trustee. It appears the debtor wants these properties to be abandoned to him so that he can find some "investors" who will come up with money to cure the arrearage and then hold the properties for the benefit of Mr. Grossman. The loans on both 773 Metro Way and 1679 Strauss Lane are not subject to cure, in the Trustee's opinion, because the due on sale clause contained in both deeds of trust was invoked when Adam Grossman transferred both properties, post-petition, without Court

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authority, and without the consent of the lenders on either property. Thus the lenders have no obligation to accept the cure funds and could proceed with foreclosure.

The Debtor's Motion should be denied in its entirety.

DATED this 11th day of May, 2012.

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/s/ Denice E. Moewes
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